

January 25, 2023

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

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JUAN MARTINEZ, *et al.*,  
Plaintiffs,

FLSA INITIAL DISCOVERY  
& MEDIATION REFERRAL  
ORDER  
21-CV-03613 (GRB) (JMW)

-against-

FELIKS & SON STORAGE TANK CORP., *et al.*,  
Defendants.  
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**WICKS, Magistrate Judge:**

The Federal Rules of Civil Procedure require a pretrial schedule tailored to the circumstances of each case. Fed. R. Civ. P. 16. The following order implements that requirement for cases based on the Fair Labor Standards Act (FLSA).

The Rule 26(a)(1) provisions on initial disclosures are waived in this case. Instead, the parties must utilize the following discovery protocol and comply with the following deadlines and requirements:

1. On or before **February 10, 2023**, the parties must serve on each other (but not file) copies of the following:

Plaintiff<sup>1</sup>: The documents in the Plaintiff's possession, custody, or control that pertain to the unpaid wages claimed in the Complaint.

Defendant: (1) The time sheets or other time records and payroll records in the Defendant's possession, custody, or control that pertain to work the Plaintiff performed during the period for which the Plaintiff claims unpaid wages; (2) any written statement of policy, workplace rules, or handbook setting out the policies and practices on compensating workers performing the relevant type of work; (3) to the extent the personal liability of any individual Defendant is disputed (*e.g.*, Defendant was not an owner or manager), provide documentary evidence to support this position; and (4) To the extent Defendant contends that its finances should be considered in

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<sup>1</sup> If there is more than one Plaintiff or Defendant, the singular reference to Plaintiff or Defendant includes the plural.

evaluating its settlement position, Defendant must produce financial documentation to Plaintiff's counsel, and that documentation must be treated as confidential.

2. On or before **February 24, 2023**, the Plaintiff must answer the Court's Interrogatories attached to this Order, under oath or penalty of perjury and serve a copy on the Defendant.
3. Within 14 days after completion of mediation, counsel must file a Report Regarding Mediation and indicate whether (1) the parties have reached an agreement in principle to settle the case and will be submitting that agreement to the Court for review and approval; or whether (2) the parties request a settlement conference before the United States Magistrate Judge who, on the parties' consent, will have the authority to approve the settlement as a "fair and reasonable resolution of a bona fide dispute" over FLSA issues, without additional filings; or (3) the parties agree they have exhausted settlement efforts, have held the required Rule 26(f) conference, and are filing a Proposed Discovery Plan, using the attached form.

All discovery in this case is stayed, except as provided in this Order and until such time as the Court issues a discovery schedule. Exceptions to deadlines will be granted only for compelling reasons. Failure to comply is a violation of a court order and sanctionable on that basis. The parties may move to alter this schedule for good cause. Any such request shall only be made after the parties confer and shall be made by joint letter request filed via this Court's ECF system.

In the event no settlement is reached under these procedures, and this Court later grants a motion permitting notice to be sent to similarly-situated individuals advising them of their right to opt-in, the limitations period for any person receiving notice will be tolled from the date of this Order until the parties file their Rule 26(f) Proposed Discovery Plan lifting the stay on these proceedings.

If the parties settle at any time, including after discovery has commenced, they must immediately advise the Court and promptly submit a joint motion to approve the settlement.

Dated: Central Islip, New York  
January 25, 2022

**SO ORDERED:**

/s/: James M. Wicks

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JAMES M. WICKS  
United States Magistrate Judge

## INTERROGATORIES

1. During what period of time did you work for the Defendant?
2. Who was your immediate supervisor?
3. Did you have a regularly scheduled work period? If so, specify.
4. What was your title or position? Briefly describe your job duties.
5. What was your regular rate of pay?
6. What is the nature of your claim? (Check all that apply.)  
  
\_\_\_\_ Off-the-clock work (Defendant failed to record, or prohibited you from recording, all of your working time);  
  
\_\_\_\_ Misclassification (Defendant mistakenly classified you as exempt from overtime);  
  
\_\_\_\_ Misclassification (Defendant failed to correctly calculate your compensation);  
  
\_\_\_\_ Other (Please describe).
7. Provide an accounting of your claim, including:
  - a) dates
  - b) regular hours worked
  - c) over-time hours worked
  - d) pay received versus pay claimed
  - e) total amount claimed
8. If you have brought this case as a collective action:
  - a. Describe the class of employees you seek to include in this action.
  - b. Has an opt-in notice been filed for every potential opt-in Plaintiff who has identified himself or herself as a person who wishes to join this action?
9. Please specify all attorney's fees and costs incurred to date. With respect to attorney's fees, please provide the hourly rate(s) sought and the number of hours expended by each person who has billed time to this case.
10. When did you (or your attorney) first complain to your employer about alleged violations of the FLSA?

11. Was this complaint written or oral? (If a written complaint, please attach a copy).
12. What was your employer's response? (If a written response, please attach a copy).

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day, personally appeared \_\_\_\_\_, who being first duly sworn, deposes and says that he/she has read the foregoing Answers to Interrogatories, knows the contents of the same, and to the best of his/her knowledge and belief, the same are true and correct.

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Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NOTARY PUBLIC

\_\_\_\_\_  
Signature of person taking acknowledgment

Print name:

Title notary public

Serial no. (if any):

Notary Stamp

Commission expires:

\_\_\_\_\_